Monday, August 14, 2000

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

KINSAK, No. 99-13417

Debtor(s).

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Memorandum re Objection to Claim #3

Debtor Kinsak is a California corporation. Its sole shareholder is William A. Saks. Creditors Tom and Debbie Riggs have filed a claim in this case for $24,926.00, based on a promissory note. The note has never been paid. Kinsak objects. The principal issue is whether a corporation can be liable on a note in which its name is not mentioned. On July 27, 1996, Saks signed a note to the Riggs as guarantor. The primary obligor was his wife. The note recites: "This note is personally guaranteed by William A. Saks . . ., in which William A. Saks or any corporation wholly owned by William A. Saks, promises to pay in full, including interest, all sums due and payable upon maturation of this note." The note was drafted by Saks. At the time the note was made, Kinsak existed but had no assets. Thereafter, it acquired an interest in what is known as "Cordelia Commons." In order to assure the Riggs that he would honor his commitment to them, Saks repeatedly told them in writing that they would be paid from the proceeds of the sale of the Cordelia property.[(1)] There is no doubt that both the Riggs and Saks intended that Kinsak be liable on the note. The objection can only be sustained if a corporation may never be liable on a note on which its name does not

appear. There is no such strict prohibition. If a person acting as a representative signs a note by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. 10 **Cal.Jur.3d**, Bills and Notes, § 384. It is therefore not fatal that there is no signature line for Kinsak on the note. In San Joaquin Valley Bank v. Gate City Oil Co., 170 Cal. 250, 149 P. 557, 558-59 (1915), the defendant corporation appealed from a judgment against it on a note. The note had been signed by its officers, but the name of the corporation was not mentioned. The California Supreme Court affirmed, holding that extrinsic evidence was properly admitted to show that the corporation was liable on the note. Since there is no absolute requirement that a corporation be mentioned in a note in order for it to be liable on it, and since a representative of a corporation may bind the corporation merely by signing his own name, the issue before the court is one of simple intent, which may be determined by extrinsic evidence. The court has no difficulty in determining that both the Riggs and Saks intended to make Kinsak liable as a guarantor of the note, even though it was not mentioned by name. The court does not find Saks' weak denial of such intent convincing. His numerous letters citing Kinsak's principal asset as the source of payment make it clear that he intended Kinsak to be bound. The note unambiguously refers to *any* corporation wholly owned by William A. Saks. Moreover, at some point principles of ratification and estoppel prohibit Kinsak from arguing otherwise. For the foregoing reasons, Kinsak's objection to the claim will be overruled.[(2)] Counsel for the Riggs shall submit an appropriate form of order, which counsel for Kinsak has approved as to form.

Dated: August 14, 2000

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Alan Jaroslovsky

U.S. Bankruptcy Judge

1. Typically, a letter written by Saks to Debbi Riggs on November 9, 1998, states, "I am committed to doing whatever it takes . . . to close the door of Cordelia and honor my commitment to you."

2. The note provides for usurious interest. However, that interest has not been claimed. If the parties cannot agree on the amount due, now that liability has been established, the matter may be brought back before the court on 10 days' n

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